

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 STEVEN B. SMITH and BRADLEY  
14 ALEXANDER GEORGE GARNER,

15 Defendants.

CASE NO. CR09-5088BHS

ORDER DENYING  
DEFENDANT GARNER'S  
MOTION TO SUPPRESS AND  
FOR EVIDENTIARY  
HEARING TO DETERMINE  
VOLUNTARINESS

16  
17  
18 This matter comes before the Court on Defendant Garner's Motion to Suppress  
19 and for Evidentiary Hearing to Determine Voluntariness (Dkt. 51). The Court has  
20 considered the pleadings filed in support of and in opposition to the motion, heard the  
21 testimony of witnesses and oral arguments of counsel, considered the remainder of the  
22 file, and hereby denies the motion for the reasons stated herein.

23 **I. FINDINGS OF FACT**

24 1. On November 17, 2008, Plaintiff United States of America filed a criminal  
25 complaint against Defendants Steven B. Smith and Bradley Alexander George Garner  
26 alleging violations of Sections 1343, 1346, and 1349 of U.S.C. Title 18. Dkt. 1. On  
27 March 19, 2009, Defendants were charged in a four-count Superseding Indictment with  
28

1 wire fraud and theft of honest services in violation of 18 U.S.C. §§ 1343 and 1346, mail  
2 fraud in violation of 18 U.S.C. § 1341, and unlawful monetary transaction in violation of  
3 18 U.S.C. § 1957. Dkt. 36.

4 2. On November 19, 2008, federal agents searched the home of Defendant  
5 Garner, which was located at 76854 Castle Court, Palm Desert, California. Defendant's  
6 wife, Stephanie Garner, was present during the search.

7 3. The federal agents had a warrant to search the Garners' house. The warrant  
8 did not authorize the seizure of computers or other electronic storage devices.

9 4. The federal agents did not advise Mrs. Garner of her *Miranda* rights and  
10 they did question her during the search.

11 5. Mrs. Garner answered some questions and then informed the agents that she  
12 needed to find an attorney because her husband had been arrested and taken into custody  
13 at the beginning of the search.

14 6. After a couple hours of the search, the agents asked Mrs. Garner about her  
15 personal computers – a Dell laptop located on a table downstairs in the house (“Dell  
16 Laptop”) and a Compaq desktop computer, which was unplugged and located in a room  
17 upstairs (“Compaq Desktop”).

18 7. At some time after Mrs. Garner requested an attorney, a federal agent,  
19 Carlos Vasquez, approached Mrs. Garner with a form titled “Consent to Search.”

20 8. There was no evidence that either Agent Vasquez or any other agent  
21 threatened Mrs. Garner during the search of her residence.

22 9. No agent had a weapon drawn during the interaction between Agent  
23 Vasquez and Mrs. Garner.

24 10. Agent Vasquez filled out the “Consent to Search” forms for the Dell Laptop  
25 and the Compaq Desktop. He then approached Mrs. Garner, explained to her that he  
26 needed her consent to search these computers, and that he couldn't search the computers  
27 without her consent.  
28

1           11.     Although Mrs. Garner testified that she did not recall whether Agent  
2 Vasquez asked her to read the forms, Agent Vasquez testified that he specifically asked  
3 her to read the forms. He further testified that she read the forms, that she understood the  
4 contents of the forms, and that she had no questions about the forms.

5           12.     After Mrs. Garner signed the forms, the agents imaged the hard drives of  
6 both computers.

7           13.     Federal agents subsequently determined that the Dell Laptop was one of the  
8 computers originally belonging to the National Aeronautics and Space Administration.

9           14.     The government has not obtained incriminating evidence from the Compaq  
10 Desktop.

## 11                                   **II. CONCLUSIONS OF LAW**

### 12           **A.     Standing**

13           1.     Defendants do not have standing to contest the search of the Dell Laptop  
14 because neither Defendant has an ownership interest in the Dell Laptop. The Dell Laptop  
15 belongs to the government.


16           2.     Although the Compaq Desktop was owned by the Garners and was used by  
17 Defendant Garner, this issue is moot because the government failed to obtain any  
18 incriminating evidence from this computer. Therefore, there is no evidence to suppress.

### 19           **B.     Voluntariness**

20           3.     Even if either Defendant had an expectation of privacy in the Dell Laptop,  
21 Mrs. Garner's consent was voluntary. Mrs. Garner was not in custody when Agent  
22 Vasquez presented the "Consent to Search" form, *Miranda* warnings were not required,  
23 the form clearly stated that she did not have to consent to the search of the computers, and  
24 the form was not presented in a threatening manner.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

**ORDERED** that Defendant Garner’s Motion to Suppress and for Evidentiary Hearing to Determine Voluntariness (Dkt. 51) is **DENIED**.

  
BENJAMIN H. SETTLE  
United States District Judge